

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NAMEL NORRIS,	:	
	:	
Plaintiff,	:	
	:	21-cv-7823 (VSB)
-against-	:	
	:	<b><u>ORDER</u></b>
ROTANA SMOKE SHOP CORP., et al.,	:	
	:	
Defendants.	:	
	:	
-----X		

VERNON S. BRODERICK, United States District Judge:

Plaintiff filed this action on September 18, 2021 against Defendants Rotana Smoke Shop Corp., French Dinner LLC., and 188 Orchard Street Corp. (Doc. 1.) Defendant 188 Orchard Street Corp. executed a waiver of service on October 18, 2021, (Doc. 12), and answered on December 17, 2021, adding a cross-claim against Defendant Rotana Smoke Shop Corp., (Doc. 16). On December 17, 2021, Plaintiff filed affidavits of service for Defendants Rotana Smoke Shop Corp. and French Dinner LLC. (Docs. 17 & 18.) The deadline for Defendants Rotana Smoke Shop Corp. and French Dinner LLC to respond to Plaintiff's complaint was November 12, 2021. (*See* Docs. 17 & 18.) On December 20, 2021, I directed Plaintiff to seek default judgment against Defendants Rotana Smoke Shop Corp. and French Dinner LLC by no later than January 7, 2022. (*See* Doc. 19.) I warned Plaintiff, "If Plaintiff fails to do so or otherwise demonstrate that it intends to prosecute this litigation, I may dismiss Plaintiff's claims against Defendants Rotana Smoke Shop Corp. and French Dinner LLC for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b)." (*Id.*)

On December 22, 2021, Defendant French Dinner LLC appeared in this action, (Doc.

20), and after two extensions, (Docs. 23 & 25), French Dinner LLC filed an answer, (Doc. 27). On January 7, 2022, instead of seeking default judgment against Defendant Rotana Smoke Shop Corp., Plaintiff filed a “status report” representing that “Defendant is sending a courier to the subject facility for [Defendant Rotana Smoke Shop Corp.] in order to solicit their response to this matter” and that “Plaintiff does not intend to seek a default judgment as Plaintiff anticipates their appearance.” (Doc. 26.) Defendant Rotana Smoke Shop Corp. did not appear.

On January 18, 2022, I again directed Plaintiff and Defendant 188 Orchard Street Corp. to seek a default judgment against Defendant Rotana Smoke Shop Corp. by January 25, 2022. (Doc. 28.) I again warned, “If Plaintiff and Defendant 188 Orchard Street Corp. fail to do so or otherwise demonstrate that they intend to prosecute this litigation, I may dismiss Plaintiff’s claims against Defendant Rotana Smoke Shop Corp., as well as Defendant 188 Orchard Street Corp.’s cross-claims against Defendant Rotana Smoke Shop Corp., for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).” (*Id.*)

On January 25, 2022, instead of seeking default judgment, Plaintiff filed a second “status report” explaining that Plaintiff’s attorney “has contacted Rotana Smoke Shop Corp by sending correspondence” and “is awaiting their response” and therefore “does not intend to seek a default judgment.” (Doc. 29.)

Accordingly, Plaintiff and Defendant 188 Orchard Street Corp.’s claims against Defendant Rotana Smoke Shop Corp. are dismissed without prejudice pursuant to Rule 41(b). The Clerk of Court is respectfully directed to terminate Defendant Rotana Smoke Shop Corp. from this action.

SO ORDERED.

Dated: January 26, 2022  
New York, New York

A handwritten signature in black ink, reading "Vernon Broderick". The signature is written in a cursive style with a horizontal line underneath the name.

Vernon S. Broderick  
United States District Judge